



The Law of Mental Health

Fall 2009

Part 2

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FACULTY OF LAW
UNIVERSITY OF TORONTO

THE LAW OF MENTAL HEALTH

Part 1

Week 1(Sept. 10): General Introduction

No Readings Assigned

Week 2 (Sept. 17): Overview of the Mental Health System

- Hartford, Kathleen, et. al., “Four Decades of Mental Health Policy in Ontario, Canada”
Administration and Policy in Mental Health, Vol. 31, No. 1, September 2003 1
- *MHA*, s. 1 (definition of “mental disorder”)..... See Appendix
- Grey, John E., Shone, Margaret A. and Liddle, Peter F., *Canadian Mental Health Law and Policy* (Butterworths: Toronto, 2000), pp. 50-66..... 10
- Bell, Sylvia, “Defining Mental Disorder,” in Warren Brookbanks (ed.), *Psychiatry and the Law* (Wellington: Brooker’s Ltd, 1996), 72-92. *Read only pp. 72-76*..... 19
- Szasz, Thomas S., “The Myth of Mental Illness,” *American Psychologist*, 15, 113, 118 (1960).. 24
- Rose, Nikolas, “Unreasonable Rights: Mental Illness and the Limits of the Law”, *Journal of Law and Society*, Vol. 12, No. 2. (Summer, 1985), pp. 199-218..... 33

Week 3 (Sept. 24): Capacity and Consent

- Zuckerberg, Joaquin, “Introduction to Capacity and Consent” 54
- *Health Care Consent Act*, ss. 2 , 4, 11 and 15..... See Appendix
- *Mental Health Act*, s.33.1 See Appendix
- *Starson v. Swayze*, 2003 SCC 32 (CanLII) Not included
- Sexuality, Smoking, Alcohol/Drugs: *CM* (TO-06-3112), *RF* (TB-07-1230) and *Ms. W.* (TO-06-0853/54)..... 59
- *A.C. v. Manitoba* (Director of Child and Family Services), 2009 SCC 30 (CanLII) Not included

Week 4 (Oct. 1): Incapacity Re Property Management and the PGT (Saara Chetner)

- *Substitute Decisions Act*, Part I; ss. 62 and 79..... See Appendix
- Chetner, Saara, “*Role of the Office of the PGT*” 95
- Mock Deliberation - Review of Finding of Incapacity Re Treatment 150

Substitute Decision Making

- *Health Care Consent Act*, ss. 20, 21 and 37..... See Appendix
- Hoffman. Brian F., *The Law of Consent to Treatment in Ontario* (2nd ed.), (Toronto, Butterworths 1997), pp. 81-87..... 154
- Gray, John E., Shone, Margaret A. and Liddle, Peter F., *Canadian Mental Health Law and Policy* (Butterworths: Toronto, 2000), Chapter 7..... 161
- Gray, John E. and O’Reilly, Richard L., “Clinically Significant Differences Among Canadian Mental Health Acts,” 315 *Can. J. Psychiatry* 46 (2001)..... 185
- Winick, Bruce J., “Advance Directive Instruments for Those with Mental Illness,” 51 *U. Miami L. Rev.* 58 (1996-1997)..... 192

Week 5 (Oct. 8): Substitute Decision Making (cont.)

- *Scardoni v. Hawryluck* [2004] O.J. No. 300 231

- Zuckerberg, Joaquin, "End-of-Life Decisions: A View from Ontario and Beyond", *European Journal of Health Law* 16 (2009) 139-164 253

Civil Commitment - Part 1

- "Introduction to Involuntary Status." 279
- *Mental Health Act*, s.1 (definition of "mental disorder"), ss. 20 (1.1), 20(5), 20(8) and 38(1)..... See Appendix
- Gray, John E. and O'Reilly, Richard L. (2001) See week 4
- Gray, John E. and O'Reilly, Richard L., "Protecting the Rights of People with Mental Illness: Can We Achieve both Good Legal Process and Good Clinical Outcomes?," *23 Health L. Canada* 25 (2002)..... 285
- Gupta, Mona, "All locked up with nowhere to go: treatment refusal in the involuntarily hospitalized psychiatric population in Canada," in Freckelton I, Diesfeld K, eds. *Involuntary Detention and Civil Commitment: International Perspectives*. Aldershot, UK: Ashgate Publishing, 2003: 155-178..... 293
- Appelbaum, Paul, "Almost a Revolution; An International Perspective on the Law of Involuntary Commitment," *25(2) J. Am. Acad. Psychiatry Law* 135, 1997 318
- Psychological harm: *L.I.*, TO-03-0898, *LA*, SU-06-5265 & 5266 & 5296, *Mr. H.J.Z.*, TO-07-0497, *Ms. B*, TO-07-0274 331

Week 6 (Oct. 15): Civil Commitment (Part 2)

- Mock Deliberation - Review of Involuntary Status 377
- *Mental Health Act*, ss. 20(8) and 38..... See Appendix
- Reread Gray, John E. and O'Reilly, Richard L., (2002) See Week 7
- Dhir, Aaron A. "The Maelstrom of Civil Commitment in Ontario: Using Examinations Conducted During Periods of Unlawful Detention to Form the Basis of Subsequent Involuntary Detention Under Ontario's Mental Health Act," *24 Health L. Canada* 9..... 384
- *H. (L.)*, Re , December 24, 2007, Docket: 03-70/07 395
- "Prompt" rights advice (prejudice, fault, time calculations): *H. S. K.* (TO-03-1275); *MS J.C.* (LO-07-0870) and *P.C.* (TO-07-2014 & 2095)..... 400
- *Ahmed v. Stefaniu (CA)*..... 443
- *Buyze v. Malla*, January 16, 2008 (OSCJ) 459
- Henry, Yukimi, "Psychiatric Gating: Questioning the Civil Committal of Convicted Sex Offenders", (2001) *59 U.T. Fac. L. Rev.* 229 - 250..... 475

CTOs

- O'Reilly, Richard, "Why Are Community Treatment Orders Controversial?" *Can J Psychiatry* 2004; 49:579-584..... 501
- Enforcement and limitations of CTOs: *Ms MBG* (TO-03-0685) 507

Part 2

Week 7 (Oct. 22): Mental Health and the Elderly (Jane Meadus)

Required Reading

- Meadus, Jane E., El Roubi-Lopez Inquest, http://www.cba.org/CBA/sections_elder/pdf/El_Roubi_Lopez.pdf 524
- Dykeman, Mary J., "Patient Sexuality in Institutional Health Settings", *3(3) R.M.C.H.C* 529

Week 8 (Oct. 29): Legal Representation of Mentally Ill Patients and Inquests (Anita Szigeti)

- Health Care Consent Act, s.81..... See Appendix
- Szigeti, Anita, *Representing a Client Who Has a Mental Health Issue before the CCB*, October, 2007..... 534
- Perlin, Michael, "The Role and Significance of Counsel," 42 San Diego L. Review 739 2005 573
- Legal Aid Ontario, "Consent and Capacity Panel Standards," at http://www.legalaid.on.ca/en/info/panel_standards.asp 594
- *Verdict Explanation on the Inquest on the Death of Jeffrey James*..... 598

Reading Week (Nov. 5)**Week 9 (Nov. 12) Mental Health and the Criminal Justice System (Joe Wright)**

- Fitness to Stand Trial: Bloom, Hy and Schneider, Richard, *Mental Disorder and the Law* (Irwin Law: Toronto, 2006), Chapter 3; *R. v. Taylor*, [1992] O.J. No. 2394 (CA)..... 630
- Criminal Responsibility - Part 1: Bloom, Hy and Schneider, Richard, *Mental Disorder and the Law* (Irwin Law: Toronto, 2006), Chapter 5 660
- Constitutionality of Criminal Code Provisions: *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625..... 677

Week 10 (Nov 19): International Human Rights and Mental Health Law

- Bonnie, Richard J., *Political Abuse of Psychiatry in the Soviet Union and in China: Complexities and Controversies*, *J. Am. Acad. Psychiatry Law* 30:136-44, 2002..... 772
- *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, 1991. G.A. Res. 199, U.N. GAOR, 46th Sess., Supp. No. 49, Annex, pp. 188-192, 1991. U.N. Doc. A/46/49..... 781
- Perley, Sharon et. al., "The Nuremberg Code: An International Overview" in Annas, George J. and Grodin, Michael A. (eds), *The Nazi Doctors and the Nuremberg Code* (New York: Oxford Univ. Press, 1992) 149-173..... 800
- Kanter, Arlene S., "The Promise and Challenges of the UN Convention on the Rights of Persons with Disabilities", *Syracuse Journal of International Law and Commerce*; Spring 2007; 34, 2; 287-308 only..... 826
- UN Convention on the Rights of Persons with Disabilities, Arts. 1 (application), 12.5 (property), 14 (liberty and security) and 15 (consent to medical or scientific experimentation) <http://www.un.org/disabilities/convention/> 848

Week 11 (November 26): Mental Health Tribunals - Student Presentations

- *Health Care Consent Act*, Part V..... See Appendix
- Overview of the CCB 878
- Carney, Terry and Tait, David, "Guardianship Dilemmas and Care of the Aged", 13 *Sidney L. Review* 61 1991, pp. 70-76..... 883
- Rees, Neil, "International Human Rights Obligations and Mental Health Review Tribunals, 10 *Psychiatry Psychol. & L.* 33 2003..... 907

Week 12 (December 3): Student Presentations

No Readings Assigned

Appendixes

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